In the High Court of Uttaranchal at Nainital.

Criminal Misc. Application No. 251/2004

Bihari Lal S/o Balama Shah,

R/o village Maithana,

P.S. Chamoli, District Chamoli …..Petitioner.

Vs.

1- State of Uttaranchal,
2- Devi Singh S/o Balama Shah,
R/o village Maithana
P.S. Chamoli, Distt. Chamoli …Respondents.

Hon'ble Irshad Hussain, J.

Heard Sri Pankaj Purohit learned counsel for the petitioner and Sri G.S. Sandhu learned A.G.A. and perused the record.

The petitioner has challenged the legality and propriety of the order dated 19-6-2003 passed under section 145 of the Code of Criminal Procedure (for short 'Code') by the S.D.M. Chamoli in case no. 27/2003 and judgment dated 24-5-2004 passed by the Sessions Judge Chamoli in criminal revision no. 18/2003.

The learned counsel drew attention to the impugned order passed by the S.D.M. Chamoli to bring home his point of view that the order does not indicate as to what is the dispute between the parties and which is the property regarding which the respective parties are claiming possession resulting which there is apprehension of breach of peace. The tone and Tenor of the order thus support the argument of the learned counsel because the learned Magistrate went on mentioning in the order that respective parties are claiming ownership of their respective piece of land. No description whatsoever had been given and therefore I am not supposed to go back to the application of the aggrieved party to ascertain as to what actually is the dispute and what is the property involved in the matter. The learned Magistrate was required under law to fully specify the description of the property regarding which there was dispute as to the

Possession and since it has not been done the order passed thereon can not be said to be legal and just.

It is also of significance that the learned Sessions Judge also did not consider this legal aspect of the matter and merely dismissed the revision on the plea that the order passed by the learned S.D.M. is interlocutory. The approach was also not justified.

For the reasons aforesaid the petition is allowed and both the impugned orders mentioned above are set aside. It is directed that the learned Magistrate may pass a proper and legal order under section 145(1) of the 'Code' on the application of the aggrieved party, if necessary, and then to proceed according to law in the mater.

(Irshad Hussain, J.)

Dated: 08-06-2004
ISB